

NOT INTENDED FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ROME DIVISION**

IN RE:	:	CASE NUMBERS
	:	
B. MAURICE ELLIS,	:	
	:	BANKRUPTCY CASE
	:	NO. 03-42992-MGD
Debtor.	:	
<hr style="width: 45%; margin-left: 0;"/>		
JANE BROOKS, NANCY TREND,	:	
and EMILY BRADLEY,	:	ADVERSARY CASE
	:	NO. 04-04065
Plaintiffs,	:	
v.	:	
B. MAURICE ELLIS,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
	:	BANKRUPTCY CODE
Defendant.	:	

ORDER

This adversary proceeding is before the Court on a Motion by Jane Brooks, Nancy Trenda, and Emily Bradley (hereafter referred to as "Plaintiffs") to Dismiss Counterclaim (Adversary Proceeding Docket No. 8) filed September 21, 2004. B. Maurice Ellis (hereafter referred to as "Defendant") filed a response to the motion on November 12, 2004. The Court has reviewed the motion and the response and has determined that a hearing is not necessary. For the reasons set forth below Plaintiffs' motion is **GRANTED**.

The Plaintiffs commenced this adversary proceeding on August 17, 2004 by filing a complaint alleging that Defendant, as trustee of an insurance trust in which Plaintiffs are beneficiaries, and as a co-executor of wills in which Plaintiffs are also co-executors and sole beneficiaries, made certain distributions to himself contrary to the fee arrangement agreed upon by the parties. Plaintiffs' complaint is mis-titled as a complaint objecting to discharge but only requests that Plaintiffs' claims against Defendant be deemed non-dischargeable pursuant to

section 523(a)(2), section 523(a)(4), and section 523(a)(6). Defendant filed an answer (and an amended answer) which denies many of Plaintiffs' allegations and sets forth two counterclaims. Defendant contends that he is entitled to relief for fees he earned as the Trustee of the insurance trust, and that he is entitled to compensation for his role as a co-executor of the wills.

Plaintiffs, in their motion to dismiss the counterclaim, contend that Defendant, as a chapter 7 debtor, lacks proper standing to bring the claims asserted in the counterclaim. Pursuant to 11 U.S.C. § 541(a)(1), the claims are property of the bankruptcy estate and the chapter 7 trustee is the sole holder of the claims. Defendant's Amended Answer concedes as much and requests that the Court treat the counterclaim as a defense in the nature of recoupment. A trustee in bankruptcy succeeds to all causes of action held by the debtor at the time the bankruptcy petition is filed. *See Miller v. Shallowford Community Hospital, Inc.*, 767 F.2d 1556, 1559 (11th Cir. 1985); *Jones v. Harrell*, 858 F.2d 667, 669 (11th Cir. 1988); and *Price v. Gaslowitz (In re Price)*, 173 B.R. 434, 440 (Bankr. N.D. Ga. 1994) (Massey, J.). As there is no indication that the claims have been abandoned by the trustee pursuant to 11 U.S.C. § 554(c), they are still part of the estate. *Neville v. Harris*, 192 B.R. 825, 830 (D.N.J. 1996). Accordingly, it is

ORDERED that Plaintiffs' Motion to Dismiss Counterclaim is hereby **GRANTED**.

IT IS FURTHER ORDERED that the substance of Defendant's counterclaim may be raised as a defense of recoupment.

The Clerk is directed to serve a copy of this Order upon all parties listed on the attached distribution list.

IT IS SO ORDERED.

This the 3rd day of December, 2004.

MARY GRACE DIEHL
UNITED STATES BANKRUPTCY JUDGE

DISTRIBUTION LIST

E. Penn Nicholson
Stephanie E. Dyer
Powell Goldstein LLP
One Atlantic Center - 14th Floor
1201 W. Peachtree Street, NW
Atlanta, Georgia 30309-3488

Richard Jeffrey MacLeod
Jeff MacLeod, Attorney at Law
P.O. Box 5183
Rome, Georgia 30162-5183

L. Lou Allen
Eels & Allen, LLC
Suite 181
The Oglethorpe Building
2971 Flowers Road South
Atlanta, Georgia 30341-4147